

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

LAMAR A. RAY,

Plaintiff,

v.

Case No. 06-C-1226

CITY OF MILWAUKEE, JOHN P. KUSPA,
MICHAEL W. LUTZ, ZEBDEE WILSON,
RODNEY KLOTKA and SCOTT SILLER,

Defendants.

ORDER

Pro se Plaintiff Lamar A. Ray, who is currently incarcerated in the United States Penitentiary-Hazelton (“Hazelton”), filed this civil rights action pursuant to 42 U.S.C. § 1983 against the City of Milwaukee and several Milwaukee police officers who he claims used excessive force in effecting his arrest. He has now filed a motion for the issuance of subpoenas to his former attorney, Calvin R. Malone, Agent Jeff Moore of the Federal Bureau of Investigations, and Detectives Carol Starr, Ralph Spano, and Tim Zehns of the Milwaukee Police Department. In addition, he seeks to subpoena all records maintained by Dr. Richard Hammond, the Chief Psychologist at Hazelton, pertaining to Ray’s experience of physical and emotional distress related to his alleged assault by the defendants. For the reasons stated herein, Ray’s motion will be granted in part and denied in part.

In their pretrial report, the Defendants have listed Detectives Starr, Spano and Zehns as witnesses they intend to call at trial. Therefore, the Court expects these individuals to appear and

testify at the trial of the above matter, and be available to Ray for cross-examination. Thus, Ray's motion for issuance of subpoenas to the detectives will be denied.

Ray may be entitled to the issuance of subpoenas directing Attorney Malone and Agent Moore to appear. However, at this time it is unclear what relevant evidence he intends to introduce through their testimony. Ray claims that Agent Moore was told of the alleged assault by Ray and Detectives Spano and Zehns, and alleges only generally that “[h]is testimony is relevant as to all issues and will contradict the testimony of the Defendants.” (Mot. Subpoena 2.) With regard to Attorney Malone, Ray claims only that his former attorney gained knowledge of the alleged assault in the course of his representation of Ray as a public defender. (*Id.* 1.) These statements fail to identify what information Ray seeks to present through the testimony of these proposed witnesses, and suggest that such information may be available through other sources. In any event, the Court is unconvinced from Ray's vague descriptions of the testimony he expects these witnesses would offer that the testimony would be relevant and the issuance of subpoenas warranted.

Accordingly, Ray's motion for an issuance for the issuance of subpoenas to Agent Moore and Attorney Malone will be denied. Ray is free, however, to renew his motion if he is able to provide the Court with additional information as to how the testimony of these two individuals would provide relevant evidence that is not unreasonably cumulative or duplicative or obtainable from another more convenient source. Ray is reminded that it will remain his responsibility to tender the amount of the required witness fees and transportation costs before any subpoena will be served by the U.S. Marshals Service.

Finally, Ray has moved for an issuance of a subpoena duces tecum pursuant to Fed. R. Civ. P. 45. By this request, Ray seeks the production by Dr. Hammond of all records related to Ray's

“emotional and physical distress from the alleged assault.” (Mot. Subpoena 3.) It appears that Ray is entitled to the issuance of such a subpoena. Because Ray indicates he does not believe Dr. Hammond’s presence will be necessary at trial, no tender of attendance or mileage fees is required to effect good service.

IT IS THEREFORE ORDERED that upon Ray’s request, the clerk shall issue a subpoena in blank to him. Upon the return of the completed subpoena, the Marshal shall serve the subpoena on Dr. Hammond.

IT IS FURTHER ORDERED that Ray’s motion for the issuance of subpoenas to Agent Moore, Attorney Malone, and Detectives Star, Spano, and Zehns, is **DENIED**.

Dated this 23rd day of July, 2008.

s/ William C. Griesbach
William C. Griesbach
United States District Judge